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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,762	02/27/2001	Hermann Winner	R 34231	6339

7590 02/26/2003

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EXAMINER

HO, HA DINH

ART UNIT	PAPER NUMBER
3681	

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/763,762	Applicant(s) WINNER ET AL.
	Examiner Ha D. Ho	Art Unit 3681
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
<p>THE REPLY FILED 19 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>		
PERIOD FOR REPLY [check either a) or b)]		
a) <input checked="" type="checkbox"/> The period for reply expires 4 months from the mailing date of the final rejection.		
b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.		
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> <p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <p>(a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> they raise the issue of new matter (see Note below);</p> <p>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p>		
<p>NOTE: _____. 3. <input checked="" type="checkbox"/> Applicant's reply has overcome the following rejection(s): <u>Rejection of claims 9-11, 13 and 14 under 112, 2nd paragraph.</u></p> <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Attachment.</u></p> <p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> <p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p>		
<p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____. Claim(s) objected to: _____. Claim(s) rejected: <u>Claims 9-11, 13 and 14 as per paragraph 5 of the Final Rejection.</u> Claim(s) withdrawn from consideration: _____. 8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner. 9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____. 10. <input type="checkbox"/> Other: _____</p> <p style="text-align: center;">11/8 2/24/03</p>		

Attachment

Applicant states, “*during the phase of standstill, the transmission position into neutral or park is held even when the brake pedal is released*” (page 5, lines 16-17). It is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, Applicant states, “*there is already a movement out of the neutral position of the transmission in Bota when the brake is released*” (page 5, the last paragraph). It is noted that the feature of the neutral position of the transmission not moving out upon the brake released is not recited in the rejected claim(s). Note that Bota’531 discloses, “*even if a driver releases a brake pedal, action of the brake is maintained compulsorily until the starting gear position is formed by connection of frictional elements in the automatic transmission*” (see Abstract).

Applicant further argues, “*there is no mention in this reference of ensuring a standstill condition*” (page 6, lines 21-22). Examiner disagrees because the reference to Bota’531 shows the device that prevents effectively a vehicle from slipping down (see abstract) which is equivalent to *ensuring a standstill condition*.

Charles A. Mahinian 7/25/03
CHARLES A. MAHINIAN
EXAMINER
3681